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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re HEAVEN T. et al., Persons Coming
Under the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

ANNA S. et al.,

Defendants and Appellants.

D053385

(Super. Ct. No. EJ2848)

APPEAL from a judgment of the Superior Court of San Diego County, Gary M.
Bubis, Judge. Affirmed.

Anna S. appeals a judgment terminating her parental rights to her minor children,
Heaven T. and Reginald T. (minors) under Welfare and Institutions Code¹ section

¹ Statutory references are to the Welfare and Institutions Code.

366.26. Anna argues the court lacked sufficient evidence to support its findings that the beneficial parent-child relationship exception of section 366.26, subdivision (c)(1)(B)(i) did not apply to preclude termination of her parental rights. Reginald T., Sr., (Father) joins in Anna's assertions.² We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

In February 2007 the San Diego County Health and Human Services Agency (Agency) filed petitions under section 300, subdivision (b) on behalf of then almost three-year-old Heaven and one-year-old Reginald. The petitions alleged Anna and Father had engaged in domestic violence in the presence of the minors. Further, Anna's use of methamphetamines placed the minors at risk of harm. According to the detention report, Anna had tested positive for methamphetamines and Father admitted acting violently toward Anna. Father stated he had used drugs in the past but had remained clean for about one year. The court held a detention hearing, detained the minors, and ordered them placed in out-of-home care. The parents did not appear at the hearing.

In the jurisdiction and disposition report, the social worker noted Father was uncooperative with the Agency. He did not want to submit to a drug test and did not appear at scheduled visitations with the minors. He claimed he showed up for the detention hearing but no one was there. Anna attended one visit with the minors but missed another scheduled visit.

² We refer to Reginald T., Sr., as Father in this appeal because he shares the same name as Reginald T., Jr.

The court held a jurisdiction hearing in April 2007. The parents submitted on the petitions. The court ordered Anna to participate in the Substance Abuse Recovery Management Systems (SARMS) program and scheduled a disposition hearing.

Before the disposition hearing took place, Father was sentenced to one year in jail on domestic violence charges. Father waived his right to visit the minors and the court ordered Father to contact the Agency once he was released from jail. The court declared the minors dependants of the court and placed them in out-of-home care.

During the next six months, Anna did not enroll in therapy sessions or a parenting class because she claimed she was too busy. Anna did not have a permanent address and her SARMS file indicated she had poor performance and she was terminated from the program. The court held a six-month review hearing. Anna and Father did not appear. The court terminated reunification services and scheduled a section 366.26 selection and implementation hearing.

In the section 366.26 assessment report, the social worker reported Anna did not regularly visit the minors. She did not attend many scheduled visits with the minors for various reasons including forgetting about visits, being incarcerated, and having housing problems. When visits took place, Anna sometimes became emotional and cried. Heaven would also cry and attempted to comfort Anna. The social worker believed the role reversal between Heaven and Anna was harmful for Heaven. During visits, the social worker sometimes had to remind Anna to be more attentive with Reginald. Reginald and Heaven sometimes cried at the end of visits with Anna. The social worker

acknowledged that Anna loved the minors and they loved her. However, Reginald had a strong attachment to his grandmother and although some relationship existed between the minors and Anna, the relationship could not be described as a parent-child relationship.

The social worker assessed the minors as adoptable because of their good health and young age. Reginald did not have behavioral problems but did have some minor speech delays that could be addressed and treated through speech therapy. Heaven had some minor behavioral problems. The minors' caregiver, their maternal grandmother, remained committed to adopting the minors. The social worker noted Heaven remained affectionate with Anna but she also displayed anger and distrust. The social worker continued to recommend a plan of adoption for the minors.

The court held a contested section 366.26 hearing. Father made an offer of proof that if called to testify he would assert he preferred a lesser permanent plan than adoption. He expected to be released from prison in February 2009 and believed the minors had a strong relationship with him that outweighed the benefits of adoption. Anna also made an offer of proof that if called to testify, she would state she did not want the minors to be adopted and planned to enter into a drug treatment program soon.

The court found the minors were likely to be adopted and none of the exceptions under section 366.26 applied to preclude terminating parental rights. The court terminated parental rights and referred the minors for adoptive placement. Anna and Father timely filed a notice of appeal.

DISCUSSION

Anna challenges the sufficiency of the evidence to support the court's finding the beneficial parent-child relationship exception of section 366.26, subdivision (c)(1)(B)(i) did not apply to preclude terminating her parental rights. She asserts she regularly visited the minors and the minors would benefit from ongoing contact with her. Father joins in Anna's argument.

A

We review the judgment for substantial evidence. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 576.) If, on the entire record, there is substantial evidence to support the findings of the juvenile court, we uphold those findings. We do not consider the credibility of witnesses, attempt to resolve conflicts in the evidence or evaluate the weight of the evidence. Instead, we draw all reasonable inferences in support of the findings, view the record favorably to the juvenile court's order, and affirm the order even if there is substantial evidence supporting a contrary finding. (*In re Baby Boy L.* (1994) 24 Cal.App.4th 596, 610.) The parent has the burden of showing there is no evidence of a sufficiently substantial nature to support the finding or order. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.)

"Adoption, where possible, is the permanent plan preferred by the Legislature." (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 573.) If the court finds a child cannot be returned to his or her parent and is likely to be adopted if parental rights are terminated, it must select adoption as the permanent plan unless it finds termination of parental rights

would be detrimental to the child under one of five specified exceptions. (§ 366.26, subd. (c)(1) (A)-(E); *In re Erik P.* (2002) 104 Cal.App.4th 395, 401.)

Section 366.26, subdivision (c)(1)(B)(i) provides an exception to the adoption preference if termination of parental rights would be detrimental to the child because "[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." We have interpreted the phrase "benefit from continuing the relationship" to refer to a parent-child relationship that "promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent[-]child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent[-]child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated." (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575; accord *In re Zachary G.* (1999) 77 Cal.App.4th 799, 811.)

To meet the burden of proof for this statutory exception, the parent must show more than frequent and loving contact, an emotional bond with the child, or pleasant visits. (*In re Derek W.* (1999) 73 Cal.App.4th 823, 827.) The parent must show he or she occupies a parental role in the child's life, resulting in a significant, positive, emotional

attachment from child to parent. (*Ibid.*; *In re Elizabeth M.* (1997) 52 Cal.App.4th 318, 324.)

B

During the dependency proceedings, Father did not regularly visit the minors as he was incarcerated for the majority of his dependency. Before his incarceration, Father did not regularly visit the minors. Anna's visitation initially was sporadic. By the six-month review hearing, her visitation had improved but she continued to miss scheduled visits. The social worker noted that during a 10 month period, Anna saw the minors 14 times. Anna's failure to visit the minors resulted in the visitation center closing Anna's case. Even had visitation been regular, Anna did not meet her burden of showing her relationship with the minors was sufficiently beneficial to outweigh the benefits of adoption. Concerning Reginald, the social worker noted he sometimes cried at the end of visits. Heaven was often worried and upset by Anna's inability to control her emotions during visits. The social worker acknowledged Heaven had some degree of a relationship with Anna and it was clear Heaven loved Anna. However, there was no evidence of a "significant, positive, emotional attachment" between the minors and Anna such that terminating parental rights would result in great detriment to the minors. (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) The social worker noted the relationship between Anna and Heaven was more of a role reversal in that Heaven parented and comforted Anna during Anna's emotional outbursts. This relationship was not beneficial to four-year-old Heaven. Reginald displayed behaviors that indicated an ambivalent attachment

to Anna. Often during visits, Anna did not give enough attention to Reginald and he was often left to play by himself and had to be prompted to interact with Anna. The evidence instead showed the minors' need for permanence and stability through adoption outweighed any interest in preserving parental ties. Both minors looked to the grandmother as a parent. The social worker opined that the minors had a stronger parent-child relationship with their grandmother than with Anna. The grandmother remains committed to the minors and she intends to provide them with a permanent home.

Where, as here, the biological parent does not fulfill a parental role, "the child should be given every opportunity to bond with an individual who will assume the role of a parent." (*In re Brittany C.* (1999) 76 Cal.App.4th 847, 854.) The minors, whose needs Anna could not meet, deserve to have their custody status promptly resolved and their placement made permanent and secure. Substantial evidence supports the court's finding the exception of section 366.26, subdivision (c)(1)(B)(i) did not apply to preclude terminating parental rights.

DISPOSITION

The judgment is affirmed.

O'ROURKE, J.

WE CONCUR:

NARES, Acting P. J.

AARON, J.